

II. REMARKS

A. Status of the Claims

Claims 1-7, 12-14, 20, 22-42 and 47-67 were pending at the time of the Office Action. Claims 13, 22, 26, 28, 29, 31, 33-42, 47-62, and 66 are now canceled without prejudice or disclaimer. Applicant expressly reserve the right to pursue the subject matter of the canceled claims in one or more divisional or continuation applications. Claims 1-3, 6-7, 12, 14, 20, 23, 24, 27, 30, and 63-64 are amended. New claims 68-70 are added. No new matter is added by these amendments. Support for the amendments can be found in the claims and specification as originally filed, and at least at page 9, line 28 *et seq.*, page 12, line 1 *et seq.* (Examples), and originally published claim 6 of WO 2004/008887. Claim 1 is amended to recite the temperature range of claim 22, now canceled. Claims 1, 6-7, 12, 14, 20, and 63-64 are amended to recite a topical composition. Claims 2, 3, 6, 23, 24, 30, and 63 are amended to more clearly comport with proper antecedent basis. Claims 1-7, 12, 14, 20, 23-25, 27, 30, 32, 63-65, and 67-70 are currently under examination.

B. Response to the Office Action

Claims 1-7, 12-14, 20, 22-42 and 47-67 were pending at the time of the Office Action. Claims 33-42 and 47-62 are withdrawn in the Action as directed to a non-elected invention. Accordingly, 33-42 and 47-62 have been cancelled without prejudice or acquiescence. Applicant reserves the right to pursue the subject matter of the canceled claims in one or more divisional or continuation applications.

The Action acknowledges the traversal of the further restriction requirement in relation to “wounds.” Nevertheless, the requirement is deemed proper and made final. Applicant previously provisionally elected the treatment of a sore as the species election within the previous generic claim to treatment of wounds.

Applicant respectfully submits that the previous provisional species election of treatment of a “sore” dated August 25, 2008, is now moot in view of the currently amended method of treatment claims 12 and 14, and claims 65 and 67 which depend thereon. Claims 12 and 14 are currently amended to recite “ulcer” as the only wound species.

Applicant expressly does not disclaim treatment of other sores or other wounds with the present compositions and makes this election without acquiescence. Applicant reserves the right to rejoin species within the scope of the generic subject matter to treatment of wounds, should the elected species be found allowable. In addition, Applicant reserves the right to pursue this subject matter in one or more divisional or continuation applications.

C. Response to further Restriction

The Action asserts that claims 33 and 34 are directed toward “an invention that is unrelated to the Invention originally claimed in claim 10” because claims 33 and 34 further recite the addition of a carrier or excipient. The Action asserts that “It can be seen from the prior art itself that the product made from the method of claim 1 can be directed toward a food product (*e.g.* jam).” The Action therefore concludes that the addition of an excipient or carrier creates a “distinct invention.” Although Applicant does not expressly traverse this further Restriction, we respectfully point out that it is not proper to read into the claims limitations that are not in the claims themselves. Certainly, presumptions as to nature of the claimed subject matter may not be

read into the claims. Whatever the prior art may ostensibly be thought to teach, Applicant respectfully submits that it does not teach the processes or the products of the present claims.

D. Response to Election of Species Requirement

The Action recognizes that claims 1-7 are generic. The Action further imposes an election of species requirement as to (1) the species of plant material and (2) the species of base. In response, *Applicant provisionally elects the species of (1) paw paw as the species of plant material and (2) bicarbonate as the species of base on which the generic claims and species claims 12, 14, 20, 23-25, 27, 30-32, 63-65, and 67-70 read.* Applicant also respectfully notes that claims 23 and 30 are also generic. Applicant reserves the right to rejoin subject matter within the scope of the generic claims, should the provisionally elected species be found allowable.

III. CONCLUSION


The Examiner is invited to call the undersigned should the Examiner have any questions regarding this response.

Respectfully submitted,

THE NATH LAW GROUP

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THE NATH LAW GROUP
112 South West Street
Alexandria, VA 22314
Tel: (703) 548-6284
Fax: (703) 683-8396

By: 

Gary M. Nath
Registration No. 26,965
Charles D. Niebylski
Registration No. 46,116
Customer No. 20259